IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
WRIT PETITION NO.1853 OF 2005

1. The Director,
National Institute of Virology,
20-A, Dr.Ambedkar Road,
Post Box No.11,
Pune- 411 001

2. The Director General
Indian Council of Medical Research,
Ansari Nagar,
P.Box No.4911,
New Delhi- 110 029.

3. The Secretary,
Ministry of Health & Family
Welfare,
Nirman Bhawan,
New Delhi- 110 011. ...Petitioners.

V/s.

Dr.Ashok K. Gupta,
B2/J12, Giriraj Housing Complex,
Gijalinagar, Chinchwad,
Pune- 411 033 ...Respondent.

Shri A.B. Avhad for the Petitioner.
Shri P.J.Prasad for the Respondent.

CORAM: A.P.SHAH &
J.H.BHATIA, JJ.
DATE : 8th July , 2005.

ORAL JUDGMENT: (Per J.H.Bhatia, J.)

1. **Rule.**

2. Rule made returnable forthwith. The matter is taken up for final hearing

immediately with consent of the learned counsels for both the parties.

3. The order passed by the Central Administrative Tribunal directing stepping up/antedating his increment, at the time of re-fixation of pay has been challenged in the present writ petition.

4. To state in brief, the respondent was promoted as an Assistant Director on 1/7/93 while his juniors Dr.Gore and Dr.Mourya were promoted to the said post on 3/2/94 and 28/2/95 respectively. The Respondent was permitted to undergo a foreign assignment from 11.10.92 to 10.10.97. However, he returned and resumed duty on 11.1.98. It is contended by the Petitioners that the Respondent had overstayed for about 100 days from 11.10.97 to 19.1.98. This period was regularised by ex-post facto sanction. Pay-scales were revised on 1.1.96. Dr. Gore and Dr.Maurya were to get their next increment on 1.2.96. However, the next date of increment of the Respondent was fixed to be 1.7.96 This was challenged by the Respondent before the

Central Administrative Tribunal with a request that his pay be stepped up or antedated so that he would also get increment on 1.2.96 when his juniors would get increment and pay would be fixed to Rs.12,375/-. This was contested by the Petitioners on the ground that after promotion on the basis of merit, there was no question of seniority among the said three officers. It was contended that as the Respondent was on extraordinary leave, his increment was deleted. After hearing the parties, the CAT rejected the contention of the Petitioners and directed for stepping up/antedating increment of the Respondent so that he would get next increment in the revised scale on 1.2.96, the date on which his juniors would get increment.

5. Heard the learned counsel for both the parties. Perused the impugned order. The said order appears to have been passed strictly on the basis of facts and the service rules. Even though the promotion to the post of Assistant Director was based on the merits, the fact remains that Dr.Gore and Dr.Maurya were juniors to the Respondent and were also

promoted as an Assistant Directors after the Respondent. Therefore, for the purpose of pay, the Respondent would continue to be senior to them. The Respondent had undergone foreign assignment with the permission of the Government and his over stay for 100 days was regularised. The over stay in 1997-98 could have no bearing on fixation of his pay and next date of increment in 1996. We do not find any mistake, illegality or perversity in the impugned order. Hence, we see no reason to exercise extraordinary jurisdiction in the Writ Petition under article 226 and 227 of the Constitution and to interfere.

6. In the result, the Writ Petition stands dismissed.

(A.P.SHAH,J.)

(J.H.BHATIA,J.)